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IN THE

Supreme Court of the United States

October Term, 1967
No. 1316

LYMAN W. AMES and MILDRED YORBA SERRANO, Administrators of the Estate of Teodocio Yorba, deceased,

Petitioners and Appellants,

vs.

THE IRVINE COMPANY, a corporation,

Respondent and Appellee.

Petition for a Writ of Certiorari to the Fourth District Court of Appeal, State of California.

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Petition for a Writ of Certiorari to the Fourth District Court of Appeal, State of California.

To the Honorable Chief Justice, and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review a Judgment of the Fourth District Court of Appeal, State of California, Intermediate Court of Appeal after timely Petition for Hearing before the Supreme Court of the State of California.

Citations to Opinions Below.

The Memorandum Opinion of the Court of First Instance, being the Superior Court of Orange County, California, which preceded the decision of the said Fourth District Court of Appeal, and which granted a

Motion for summary Judgment in favor of respondent-appellee is unreported. The Opinion of the said Intermediate Court of Appeal from which a Petition for Rehearing was denied is reported in California Official 246 A.C.A. 969, and 55 Cal. Rptr. 180, and printed in Appendix B hereto, *infra,* pages 4-15. The California Supreme Court denied appellants' Petition for Hearing from said Fourth District Court of Appeal without an Opinion.

Jurisdiction.

On December 5, 1966, the Judgment of the Superior Court, Orange County, California, was affirmed by the California Fourth District Court of Appeal. Petition for Rehearing was denied on December 21, 1966. Timely Petition for Hearing before the California Supreme Court was denied on February 1, 1967, which Judgment thereupon was entered as a Final Judgment.

The jurisdiction of this Court is invoked under Section 28, U.S.C. 1257(3) to determine title, rights, privileges, and immunities under the Federal Constitution and Federal Treaty.

Federal Questions Properly Presented to the State Courts.

The California Courts of First Instance, Intermediate Court of Appeal, and Supreme Court, have failed and refused to pass upon Federal Questions expressly raised and presented before said Courts by petitioners, as follows:

Attention was called and argued to the California Courts in each instance that said State Court could not go "in back" of issues determined by Federal Circuit

Court Judgment, *i.e. United States v. Flint, et al.* (case numbered 15,121, Circuit Court D. California, September 4, 1876; 4 Sawy. 42; 25 Fed. Case 1108) printed in full herein, Appendix C (pp. 19-42). To thereby, contrary to the determinations made by said Court, take away appellants property rights. Said Federal case of *United States v. Flint, supra,* protected appellants property rights by interpreting the Congressional enactments as to the Treaty of Guadalupe Hidalgo, between the United States and Mexico and Judgment of Confirmation of claim to land [Pltf. Ex. H, *infra*] as applied specifically in favor of the decedent, Teodocio Yorba, in this Petition for Certiorari at bar by said decedent's Administrators.

The above Federal Appellate Court decision was particularly called to the attention of the California Courts, *i.e.*:

(1) *United States v. Flint, supra,* cited and argued by appellant before the State Court of First Instance and placed in evidence to conclusively prove an element which *per se* defeated appellee's case below on the issue that the decedent appellant in the case at bar "knew" he owned eleven leagues of land, instead of only four leagues on the date of the writing in controversy, *i.e.* December 3, 1860. The attention of the said State Court of First Instance was called to appellant plaintiffs Exhibits B, D, and E (Appendix III, page 38, *et seq.*, Petition for Hearing, California Supreme Court), which proved the plaintiff decedent had already mortgaged more than four leagues of land to respondent appellee's predecessor in title and there-

fore knew that his ownership exceeded the four leagues to which decedent limited his conveyance in controversy, to respondent appellee on December 3, 1860.

(2) *United States v. Flint, supra,* cited and argued by appellant before the Court of Second Instance, *i.e.* California Court of Intermediate Appeal, in appellants Opening Brief, pages 8 through 11, inclusive thereof, to conclusively establish that said appellant decedent knew he already owned eleven leagues when he granted four leagues on December 3, 1860, the date of the writing in controversy so that WHEN DECEDENT, DURING HIS LIFETIME, USED THE WORDS FOUR LEAGUES, HE DID NOT MEAN OR INTEND TO MEAN ELEVEN LEAGUES, but instead intended to retain a moiety of seven leagues from his total paramount title of eleven leagues.

(3) *United States v. Flint, supra,* cited and argued by appellant at pages 10 through 12, and 20 through 22, of Appellants Petition for Hearing before the California Supreme Court (wherein said Federal Court case was quoted on the issue in full as Appendix II, pages 13 through 37 thereof), to establish that as a matter of law decedent on December 3, 1860, the date of the writing in controversy knew he already owned eleven leagues when he granted four leagues in the deed in controversy.

Although the State Courts conflict with the Federal Appellate Court determinations was immediately called to the attention of the State Courts, and each of them,

they refused to follow the Federal Law submitted and attached no significance to the same. The California Courts, as appears in the Opinion below (Appendix B, pp. 4-15) omitted and refused to comment on, or refer to the federal issue raised by appellant. The State Court, contrary to appellants admonitions, went "in back" of said Federal Court Judgment (*United States v. Flint, supra*) as though the Judgment had not existed and redetermined a matter foreclosed and adjudicated by said decision of the United States Federal Appellate Court. As hereunder specified, the State Court violated the Constitutional rights of the decedent by imputing to decedent an "intention" to convey land in violation of the rule of law laid down by said Federal Court which has resulted in a forfeiture of decedent's Treaty protected property rights under said Federal Court decision.

The State Court at bar, assumed, contrary to the prohibition dictated by said Federal Case, that when decedent used the words four leagues on the date of the writing in controversy, after the confirmation of his claim, he really intended to mean eleven leagues, because purportedly decedent had made the same mistake many years before. It had already been adjudicated and the mistake cleared up judicially as an ultimate fact in said Federal Court case (*supra*) that the decedent at all times had owned eleven leagues, even though the decedent many years before and prior to the confirmation of his claim, had used the words four leagues instead of eleven leagues. The Federal Appellate Court case (*supra*) determined that it was untrue that all of the land decedent owned was four square leagues nor could the same be described as such.

When petitioners called attention to the California Courts, that said Courts were violating the rule of law set down in *United States v. Flint (supra)*, the Supremacy Clause and Treaty Clause of the Constitution of the United States, petitioners raised the following questions:

(1) Whether the decision of the State Court at bar was in violation of and against the title, right, privilege and immunity claimed by decedent under the TREATY OF GUADALUPE HIDALGO between the United States and Mexico, and,

(2) Whether the State Court failed to give due effect to the Final Judgment of a Federal Court of Appeal in relation to the same property here involved and conclusive upon the parties hereto as successors in interest and in privity with the actual litigants in said case?[1]

Constitutional Provisions and Statutes Involved.

The Constitution of the United States, Article VI, Section 2; and Article III, Sections 1 and 2; Treaty of Guadalupe Hidalgo, Article VIII (9 Stats. at L. 922); *United States v. Flint, et al.*, 4 Sawy. 42, 25 Fed. Case 1108.

The above are printed in Appendix A and C (*infra*).

Question Presented on Certiorari.

May the California State Courts nullify the property rights received from the Mexican Government of one of its citizens, resident of California, conserved and

[1] *Nat. Foundary Pipe Works v. Oconto City Water*, 183 U.S. 216, 46 L. Ed. 157, 22 S. Ct. Rep. 111.

protected by the Treaty of Guadalupe Hidalgo (9 Stats. at L. 922), between the United States and Mexico in failing to give due effect to the congressional enactments thereunder as constituted and interpreted by a Final Judgment of a United States Court of Appeal with relation to the specific property rights involved in the case at bar (*United States v. Flint, supra,* Appendix C herein).

Petitioners at bar have been impelled to raise the question of whether a State Court may now redetermine, to the prejudice of appellant's property rights, a matter heretofore pre-empted and determined by a Federal Final Appellate Court Judgment involving said petitioner and the same land, and respondent's predecessors in title as parties.[2] The State Court in doing

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[2]Alexander Hamilton in "THE FEDERALIST NO. 82", commented upon Article III, Sections 1 and 2, and while recognizing that concurrent jurisdiction may be exercised by State and Federal Courts as to the judicial powers, Paragraph 1 of said Section 2, he clearly stated: "But this doctrine of concurrent jurisdiction is only clearly applicable to those description of causes of which the state courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be PECULIAR to the constitution to be established: For not to allow the state courts a right of jurisdiction in such cases can hardly be considered as the abridgment of a pre-existing authority. I MEAN NOT THEREFORE TO CONTEND THAT THE UNITED STATES IN THE COURSE OF LEGISLATION UPON THE OBJECTS ENTRUSTED TO THEIR DIRECTION MAY NOT COMMIT THE DECISION OF CAUSES ARISING UPON A PARTICULAR REGULATION TO THE FEDERAL COURTS SOLELY, IF SUCH A MEASURE SHOULD BE DEEMED EXPEDIENT; but I hold that the state courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal;" (emphasis added).

Clearly the determinations of the District Court of the United States for the Southern District of California, file number 186, under caption of Lomas De Santiago, that said Mexican grant was confirmed in the quantity of eleven leagues was the sole

(This footnote is continued on the next page)

so in the case at bar exceeded the prohibitions of the Constitution of the United States, Article VI, Section 2 of the Supremacy Clause, which provides:

> ". . . and the Judges of every state shall be bound thereby . . ."

Appellants, Administrators of the Estate of Teodocio Yorba, deceased, filed an action for Declaratory Judgment in the State Courts to remove uncertainties with respect to real estate owned in common with the respondent, The Irvine Company, a Delaware Corporation, arising out of certain written instruments. During the existence of the cotenancy between the parties hereto the land has been preserved and activities thereon have been financed from income produced by the land itself to the benefit of the land, and to the common benefit of the cotenants. The State Court, in the matter at bar, adjudicated and determined that by virtue of a Deed executed by said decedent during his lifetime, on December 3, 1860 [Pltf. Ex. A, p. 38, Appendix III, Petition for Hearing, California Supreme Court], that the decedent's estate had no interest or title in the land, as a matter of law, by way of Summary Judgment without a Trial on the merits. *The decision of the State Court does not rest upon the Statute of Limitations, laches, adverse possession, abandonment, waiver, stale-claim, or any other application of local law.* APPELLANTS CONTEND THE STATE COURT BELOW VIOLATED FEDERAL LAW WHEREBY SEVEN LEAGUES OF LAND

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court empowered by Congress to make determinations in the premises and was conclusive upon the State Court as to any issue of mistake or fraud, settlement of which issue cannot be twisted to furnish a basis to support another issue, as in the case at bar.

RETAINED BY DECEDENT UNDER HIS PARAMOUNT TITLE WERE CAUSED TO BE FORFEITED BY THE STATE COURTS BELOW.

Reduced to its simplest terms, the case below involved the question of whether the decedent under his paramount title intended to convey an undivided four leagues of land to appellee's predecessor in title or all of the eleven leagues of land to his grant named "LOMAS DE SANTIAGO". The interpretation of the *decedent's intention* turns upon a question of Federal Law as established in the Federal Appellate Court decision of *United States v. Flint, supra* (Appendix C herein).

The jural relationship between the parties herein which is in accord with California Law is that when a cotenant, as did the decedent appellant in the case at bar, conveys land and retains an undivided interest, he conveys the entire quantity or parcel, *subject to his undivided interest,* as his moiety is indivisible within the entire quantity or parcel. There is no repugnancy to such type of retention as to the whole. The various cotenants own the entire quantity as one person to the extent of their respective undivided interests.

Proceedings Below.

The decedent during his lifetime [Pltf. Ex. H, p. 53, Appendix III, Petition for Hearing, California Supreme Court; which has been certified to this Court] had confirmed to him on December 11, 1856, by a United States District Court his claim to land to the extent of eleven leagues to a Mexican Grant named "LOMAS DE SANTIAGO":

The rule of law called to the attention of the State Courts below (*United States v. Flint, supra*) was that no Court of Law or Equity (which includes the State Court at bar) could "go behind" a Confirmatory Judgment of eleven leagues dated December 11, 1856, which was in favor of the claimant (petitioner herein) to review the proceedings which predated said Confirmatory Judgment and extract therefrom an element of fraud or mistake to supply a constructive intention and impute said intention to the decedent appellant herein contrary to said Confirmatory Judgment. In said Confirmatory Judgment the issues were determined and concluded by Trial upon the merits, by said Confirmatory Judgment and it was so declared and determined in the case of *United States v. Flint, supra* [Pltf. Ex. H, in evidence, p. 53, Appendix III, Petition for Hearing, California Supreme Court; Appendix C herein].

After December 11, 1856, and on December 3, 1860, the date of the deed in controversy, said eleven square leagues of land, as a matter of law, could not be referred to as four square leagues of land for any purpose to defeat the property rights of appellant or to the prejudice of the rights of appellant by the State Court, the United States Government, or any of the parties to this action.

The State Court in the case at bar violated the rule of law laid down in the Federal Court Judgment of *United States v. Flint, supra* (September 4, 1876) (Appendix III, p. 53, Petition for Hearing, California Supreme Court; also see Appendix C this Petition) to sustain its opinion that the decedent appellant must have intended to convey eleven leagues, even though the words four leagues appeared in his deed.

It was settled in said Federal Court of Appeals case, that the Confirmatory Judgment [Pltf. Ex. H, *supra*] had finally determined "AS TRUE" that decedent at all times owned and had confirmed to him eleven leagues of land, more or less, and settled as "UNTRUE" that the subject matters determined in said proceedings leading to and included in the Decree of Confirmation, could be collaterally inquired into by the parties hereto, or their privies, upon the grounds of mistake or fraud, as did the State Court in the case at bar, in order for said State Court to inquire into the intention of the parties, after the fact, and adversely to the rule of law and facts set at rest by said Federal Court of Appeal.

On the Patent issued to decedent after his death (*infra*), it was recited that on October 26, 1852, in proceedings before the United States Land Commission, it had been stated by decedent in said decedent's original Petition for Confirmation of his grant to the land from the Mexican Government, that his petition had made reference to four leagues. On the date of the conveyance, in controversy, *i.e.* December 3, 1860, the matter had long been settled by Federal Court Judgment that decedent appellant had always owned eleven leagues and that when he had originally referred to the four leagues it was an "untruth".

The materiality of the Patent was limited to establish the paramount title in the decedent. Said Patent dated January 10, 1867 [Pltf. Ex. L, p. 71, Appendix III, Petition for Hearing, California Supreme Court] contained said recital that Yorba had originally petitioned for four square leagues. THE STATE COURT AT BAR SINGLED OUT A PREFATORY RE-

CITAL FROM THE PATENT so issued by the Executive Branch of the Government to Yorba, after his death. Said reference was unconnected with the Deed in controversy and was disassociated from it completely. Said prefatory recital from the Patent formed no part of the resolutory body of the Patent. The State Court below contrary to decedent's Treaty rights, and contrary to petitioners repeated objections adjudicated in substance that because said recital, prefatory in nature, appeared in the Patent issued after decedent died, that the Patent was to control the Confirmatory Judgment and contrary thereto imputed to the decedent a constructive "intention" to convey eleven leagues when decedent unequivocably used the words "four leagues" only in his deed. The State Court in the case at bar drew the inference of fraud or mistake and thereby has attempted to do, in the instant, exactly what the United States Court in *United States v. Flint, supra,* said could not be done, not even by the United States itself, in excess of its jurisdiction.

The State Court in the case at bar decided against the intention of said decedent to retain an undivided seven leagues portion of land by the false hypothesis that neither decedent nor said official bodies of the United States Government knew the difference between four leagues of land and eleven leagues.

Petitioner raised the further question below (see also for detail, pages 41 to 45 inclusive, Petition for Hearing California Supreme Court, certified in the record before this United States Supreme Court) of whether the State Court violated the Treaty of Guadalupe Hidalgo between the United States and Mexico, by the manner, State action by way of summary proceedings,

instead of Trial, in which it has deprived petitioner of his land (9 Stats. at L. p. 922), Article VIII thereof which reads:

> "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, . . . RETAINING THE PROPERTY WHICH THEY POSSESS in the said territories . . ." (emphasis ours).

Petitioners ownership to the seven leagues, more or less, of the land patented and retained by said decedent and his heirs, as a tenant in common, constitutes property retained and possessed by him and is protected by Treaty. The Patent which issued as a ministerial act by the United States Government in discharge of its Treaty Obligation to said decedent Yorba and his heirs (*infra*) was designed to declare and protect and may not be used contrary to law by the State Court below to defeat the rights of Yorba in the land confirmed. The Patent was to give him security and protection in the enjoyment of the property covered by its terms.

The selection of a remote reference in said posthumously issued Patent, to decedent Teodocio Yorba, who died with minor heirs, to create a fictional animus of intention, which was judicially determined by a Federal Court as "untrue" is beyond the province of the State Court whose duty it is to protect the Treaty rights of the decedent.

Importance of Case and How Federal Law Was Specifically Violated.

This case involves the need for observance by a State Court of the rule of Federal Law and the Supremacy Clause of the Constitution as laid down by decision of Appellate Federal Courts, for an orderly and effective federal judiciary. It is important that the United States Supreme Court maintain that the decisions and determinations of Federal Court of Appeal under Article VI, Section 2, of the United States Constitution are binding upon State Courts and that the indirect violation of Federal issues determined by Federal Courts by State Courts in rehashing contentions and issues already laid at rest and by accepting as "true" facts resolved by Federal Court as "untrue", may not be countenanced.

The State Court in the case at bar violated the prohibitions and restrictions placed upon the parties privity to said United States Court Judgment by *United States v. Flint, supra* (Appendix III, p. 53, Petition for Hearing, California Supreme Court, Appendix C. herein) which prohibitions and restrictions appear in the following language:

> "As thus seen, the most ample powers were vested in the commissioners and the district court to inquire into the merits of every claim; and they were not restricted in their deliberations by any narrow rules of procedure or technical rules of evidence, but could take into consideration the principles of public law and of equity in their broadest sense."
>
> *"On principle, such adjudications cannot be reviewed or defeated by a court of equity, upon any*

suggestion that the commissioners and court misapprehended the law, or were mistaken as to the evidence before them, even if that consisted of fabricated papers supported by perjured testimony."

"In the case of Yorba [unreported], the appeal from the decree of confirmation, rendered by the district court, was dismissed upon notice of the attorney-general that the appeal would not be prosecuted, and thereupon the decree became final. The decree was thus assented to by the highest legal officer of the government, specially charged with supervision over the subject. The validity of the decree, and of the grant upon which the claim of Yorba was founded, was thus forever put at rest. From that day it could never be successfully questioned in any form of procedure, or by any tribunal known to our laws. It was a closed question for all time." (Emphasis ours.)

The rule established by said Federal Appellate Court decision of *United States v. Flint, supra,* was that ALL prior contentions, admissions, declarations, facts, evidence, and proofs relating to the claim filed by petitioner, in this case Teodocio Yorba, had been settled and laid at rest as of December 11, 1856, by Decree of Confirmation [Pltf. Ex. H, *supra*] four years before the Deed in controversy which latter was dated December 3, 1860.

The State Court did not give due effect to said United States District Court Judgment, which held in substance, *that Yorba at all times owned and knew he owned,* and that his claim and grant was valid to the extent of eleven square leagues of land irrespective of whether in his original application to the Mexican

Government for Lomas De Santiago he had said four leagues.

The State Court was prohibited from supplying an element necessary to substantiate its Opinion and thereby to extract an erroneous fact from behind the Federal Court Judgment to thereby frustrate and defeat the facts set at rest by said Federal Court Judgment in the protection of the property rights of the decedent in the case at bar, by what the State Court at bar contrary to the matter set at rest deemed to be a "noteworthy" and "significant" fact in its decision to support its involved Judgment that decedent intended to convey all of his land when he stated four leagues in the granting clause of his deed, which the State Court below did in the following language:

Said the California Court in construing the intention of the decedent on December 3, 1860, by having many years prior to the date of the deed in controversy referred to his claim as having four leagues:

> "NOTEWORTHY . . . is the *fact* that in his petition for confirmation Yorba referred to the property claimed by him as a tract land 'containing four square leagues' by virtue of which he obtained a confirmation of his claim to *that tract of land* 'to the extent of eleven square leagues,' and a patent to *that tract of land* using a description thereof encompassing 10.7 square leagues" (page 11 of Opinion, District Court of Appeal; Appendix B, herein). (Emphasis ours).

The State Court of First Instance in the case at bar, had also construed the intention of the decedent by what it deemed SIGNIFICANT in having orig-

inally, many years before the date of the conveyance in controversy, referred to his claim (October 26, 1852) as having four leagues. Said the State Court:

> ". . . IT IS SIGNIFICANT that Yorba's claim filed with The Board of Land Commissioners was for a claim to a tract of land 'containing four square leagues, more or less! . . . [Clk. Tr. Vol. II, p. 156, lines 23-25]." (emphasis ours).

For a State Court to attach NOTEWORTHY and material SIGNIFICANCE to a preliminary and prefatory recital which appeared in the Patent issued to Teodocio Yorba and his heirs, many years after decedent's death, he having died with minor heirs, wherein reference was made to the fact that the decedent had made reference to his original claim before the Mexican authorities and for the State Court below to conclude thereby that because decedent originally either by mistake or inadvertence or other accident said this claim was four leagues instead of eleven leagues that therefore it was his intention to convey eleven leagues during his lifetime when he limited his grant to four leagues is arbitrary and in violation of Federal and Treaty Law, as herein set forth.

The Treaty Rights of the decedent and Congressional Enactments thereunder are to be liberally construed in favor of protecting the property rights of the decedent who belonged to the class to be benefited by the Treaty and are not to be construed in derogation of or to defeat his property rights[3] (see also, pages 41 to 45

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[3]*Chase, R., In Ware v. Hylton*, 3 Dal. 199, 1 U.S. 568; *Todok v. Union State Bank*, 281 U.S. 449 (1930), 50 S. Ct. 363; *Jordan v. Tashiro*, 278 U.S. 123, 128 (1928) 49 S. Ct.

(This footnote is continued on the next page)

inclusive, Petition for Hearing, California Supreme Court). Said United States Circuit Court of Appeal case, *United States v. Flint, supra,* which binds the State Court in the case at bar expressly read that no issue could be raised of fraud or mistake to assail the Decree of Confirmation to decedent and his heirs by the United States Court to this Treaty beneficiary which Court had spoken the truth as to all prior contentions or issues. Nor may a Patent issued subsequently to decedent's death be used as a contrivance to enable a State Court to circumvent a Federal Appellate Court decision referred to above. A ministerially issued Patent by a Federal Administrative Agency cannot frustrate that which has been solemnly adjudicated by a Court of Law.

The parties themselves thereafter executed instruments in writing and granted four leagues based on the truth of the facts as established by said Final Judgment, *i.e.* United States District Court [Pltf. Ex. H, p. 53, Appendix III, Petition for Hearing, California Supreme Court].

The State Court below contrary thereto determined that decedent Yorba and the United States Government Agencies were mistaken as to the original claim and in violation of the Supremacy clause inferred as a matter of law that Yorba *intended* to convey eleven leagues when he used the language four leagues.

The State Court at bar, contrary to the rule laid down by the Final Decision of said *United States v. Flint,*

47; *Hauenstein v. Lynham,* 100 U.S. 483, 487 (1879). Also See: *Geofroy v. Riggs,* 133 U.S. 258 (1890); *In Re Ross,* 140 U.S. 453 (1891); *Asakura v. Seattle,* 275 U.S. 332 (1924); *Nielsen v. Johnson,* 279 U.S. 47 (1929); *Bacardi Corp. v. Domenech,* 311 U.S. 150 (1940).

supra, examined prior contentions, declarations and proofs to render a meaning to the decedent's expression of four leagues as meaning eleven leagues because in the written conveyance of land to respondent's predecessor in title one William Wolfskill, decedent referred in the *habendum* of said derivative title to the words "the quantity given by the United States Court to be the quantity conveyed by this instrument". It was determined by the State Court below that a quantity of eleven leagues as a matter of law excluded a moiety of seven leagues within said quantity of eleven leagues, *i.e.* an aliquot portion of 7/11ths approximately, and that cotenants could not own the entire parcel of land, as to each and every part thereof in undivided proportions. The State Court below to reconcile the exclusion of decedent's moiety of 7/11ths directly violated the tenats of the Federal Appellate Court case. Said the State Court that when decedent said four leagues, he intended to mean the entire Patent of 10.7 leagues contrary to the following prohibition of the Federal Court case, *supra.*

Said the reported *Flint* case Opinion (*supra,* 25 Fed. Case at p. 1108) in the following language, to wit:

> "It thus appears, after a contest for nearly sixteen years before Officers and Tribunals of the United States, the claimant (Teodocio Yorba, appellant herein) obtained a Patent from the government, an instrument DESIGNED TO GIVE TO ITS HOLDER SECURITY AND PROTECTION IN THE ENJOYMENT OF THE PROPERTY COVERED BY ITS TERMS." (Emphasis ours).

The reported decision continued in the Opinion, at page 1109, 25 Fed. in the following language:

> "The obligation therefore, to protect private rights of property . . . in recognition of this obligation, Mexico obtained from the United States in the Treaty of cession, an express stipulation for such protection."

In speaking of the finality of the claim for eleven leagues owned by Teodocio Yorba, the Federal Circuit Court, 25 Fed. case, *supra,* page 1110 of its Opinion said:

> ". . . such adjudications cannot be ~~received~~ reviewed or defeated . . . upon any suggestion that the commissioners and court misapprehended the law, or were mistaken as to the evidence before them, even if that consisted of fabricated papers supported by perjured testimony . . ."

The California State Court in this case on appeal has attempted indirectly that which the United States could not do directly, in violation of said Federal Court's decision on a national matter (Appendix I, Opinion of the Lower Intermediate Court of Appeal, Page 1, Petition for Hearing, California Supreme Court).

The State Court's premise has resulted *Ipso Facto* in the inflation of a grant in fee simple of four leagues of land conveyed by decedent appellant herein to a fee simple in 10.7 leagues of land conveyed. The State Court failed to perceive that both co-tenants owned the entire undivided surface *in toto* irrespective of what proportion each cotenant may have held percentage-wise within said boundaries. When Yorba, a cotenant, conveyed an entire area of eleven leagues, more or less,

to the extent of four leagues, he thereby retained seven leagues more or less, and for a State Court to violate the rule of law set down in the *United States v. Flint, supra,* to substitute a different "intention" and thereby enable the forfeiture of appellants undivided property rights of seven leagues cannot be countenanced without striking from the official records said decision of *United States v. Flint, supra,* said decedent's rights under the Treaty of Guadalupe Hidalgo, and the judgment [Pltf. Ex. H, *supra*].

Conclusion.

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MANUEL RUIZ, *of Counsel for Alexander Ruiz and Manuel Ruiz, Attorneys at Law.*